(1)

Supreme Court, U.S.
FILED

961427 MAR 7 1997

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

JOSEPH P. DICICCO,

Petitioner,

vs.

EARL A. BONSEY, et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR A WRIT OF CERTIORARI

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62 pp

QUESTION PRESENTED FOR REVIEW

Was it deprivation of due process of law, protected by the Fourteenth Amendment, Sec. 1, when the federal court created a direct conflict between the Rooker-Feldman doctrine and 42 USCS §1983, by deciding the constitutional question prior to deciding the dispositive statutory question, resulting in deprivation of the Petitioner's property interest in §1983?

LIST OF PARTIES

Earl A. Bonsey

James Leighton

Robert P. Tremblay

Judge Jack O. Smith, Superior Court, Maine

Justice David S. Roberts, LAW COURT

Sandra Hylander Collier Esq.

Earle S. Tyler, Jr. Esq.

All respondents are citizens of Maine

Petitioner is citizen of New York

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The judgment of district court, Bangor, Maine, is on p. 24a.

STATEMENT OF JURISDICTION

On petitioner's appeals, the United States Court of Appeals for the First Circuit entered a judgment affirming the judgment of district court, on August 27, 1996.

On December 24, 1996, Justice Souter ordered that the time for filing this petition for writ of certiorari be extended to and including March 7, 1997. (p. 43a)

The jurisdiction of this Court to review the judgment of the United States Court of Appeals is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fourteenth Amendment, Sec. 1, and Sixth Amendment of the Constitution of the United States.

Federal Statute 42 U.S.C.S. §1983

State of Maine statute 14 M.R.S.A. §870 (Prior litigation not a bar).

STATEMENT OF THE CASE

The jurisdiction of the District Court (Bangor, Me.) was invoked under 42 U.S.C.S. §1983, and also under Diversity of Citizenship, the plaintiff being a citizen of New York, and all defendants are citizens of Maine.

July 13, 1995, Complaint filed. (p. 25a to 40a).

Count I charged civil rights violations, under 42 U.S.C.S. §1983, against the nexus of Defendant Judge Smith and Petitioner's ex-attorney, Defendant Collier. The nexus suppressed the pivotal new evidence (that was properly presented before retaining Collier) at the post-trial hearing for the Tremblay v. DiCicco state bench trial. The Complaint states that the motive for the suppression was to prevent exposure that Judge Smith fixed the trial for Tremblay (¶¶ 73, 54-73); that Judge Smith's Judgment was physically impossible, and thus in fundamental error; and that Tremblay committed fraud and perjury at the trial.

Count II charged Justice Roberts, under 42 U.S.C.S. §1983, with suppression of further new evidence, which included that Defendant Bonsey, who was DiCicco's witness at said trial, turned out to be a conspirator with Defendants Tremblay and Leighton. Petitioner requested Roberts to return the file to Superior Court, so that he could get a proper hearing, and not the fraudulent hearing that was perpetrated by the nexus. Roberts denied request. (¶ 82)

Count III, (under state statute 14 M.R.S.A. §870, "Judgment obtained by Perjury within Tort") charged Tremblay, Bonsey, and Leighton with conspiracy and

fraud; Tremblay and Leighton with perjury; Bonsey with false statements. Judge Smith's participation in Count III, is described in Count I, ¶¶ 54-76. District Court gave no response to the interdependence between Counts I, II, and III.

Aug. 7, 1995 Defendant Justices Smith and Roberts file Rule 12(b)(6) F.R.C.P., motion-to-dismiss. The motion makes no mention of the genuine material issue of the nexus, or that Judge Smith fixed the trial.

Aug. 14, 1995 Petitioner called for sanctions for the false representations in the Aug. 7, 1995 motion to dismiss.

"The Complaint presents issues which are sustained by substantial evidence, that Justices Smith and Roberts concealed all of the new evidence, in the plaintiff's motion for new trial, so that, in particular, the Richardson deed would not surface, and the fundamental error of Judge Smith's Judgment be not, thereby, exposed."

Aug. 26, 1995 Petitioner requests a conference to discuss local prejudice that was aroused by the Aug. 7, 1995 motion, ("characerizing the plaintiff's Complaint as nothing more than a sore loser's vengeance on two Justices,") particularly within "the very offices of the Federal Court." Such a conference was necessary, "in order to discuss preservation of due process rights . . . " Request denied, Nov. 6, 1995.

Aug. 31, 1995 RECOMMENDED DECISION by Magistrate Judge to dismiss Defendants Smith and Roberts.

"This action arises out of a boundary dispute . . . Defendants Smith and Roberts now move to dismiss . . . on

grounds that this Court has no authority to "correct" a judgment . . . Plaintiff argues that he is not asking . . . to inquire into the correctness . . . However, he then proceeds to explain that the decision contained a fundamental error . . . "

Sept. 8, 1995 Petitioner's Objections to RECOMMENDED DECISION. "Where exactly in those 20 issues (of Counts I and II) is the reference being made? The first eleven issues concern the judge-attorney conspiracy, which had the motive of concealing the new evidence so as to not expose the fundamental error . . . "

Aug. 31, 1995 Defendant Bonsey files Rule 12(b)(6) motion-to-dismiss, stating that Plaintiff cannot sue his own witness for perjury, quoting case law from Spickler v. Greenberg, 644 A.2d 469, 472 (Me. 1994).

Sept. 20, 1995 Petitioner objects to Bonsey's motion-to-dismiss. ". . . Count III is a tort by defendants Bonsey, Leighton, and Tremblay, which includes false statements on the witness stand, (Bonsey) and perjury. (Leighton and Tremblay)"

Oct. 30, 1995 ORDER by the Magistrate Judge, converting Bonsey's motion-to-dismiss to a Rule 56 Summary Judgment. The scope is to be restricted to just the testimony given by Bonsey at the trial, leaving out the charges of conspiracy, fraud, and false statements . . . "Defendant Bonsey testified at the state trial **that is the subject matter of this action** as a witness for Plaintiff." (emphasis added)

Nov. 1, 1995 Bonsey files affidavit, giving the only response required by the restricted scope of the Summary

Judgment, which was, that he, Bonsey, indeed, was a witness for the Petitioner, at the Tremblay v. DiCicco bench trial. ¶ 28 in the Complaint already gave that information.

Nov. 10, 1995 Petitioner files "Death Knell" Notice of Appeal, to the Court of Appeals for the First Circuit, because, "It is necessary that the Plaintiff file this appeal now, rather than be forced to file an affidavit for a contrived Summary Judgment, which would only confuse the finality of the Order." [for the Summary Judgment]

Nov. 15, 1995 ORDER from District Court " . . . the [Petitioner's] appeal is not from an order which is either final or appealable and that it is . . . [to be] STRICKEN . . . "

Dec. 6, 1995 Petitioner asks leave to amend[1] the Complaint in order to make more explicit, what is already explicit in the Complaint, and that is "Defendant Bonsey is NOT being charged with perjury . . . "

Jan. 24, 1996 RECOMMENDED DECISION by the Magistrate Judge to dismiss the Complaint. **". . . no federal claims remain in the action."** (emphasis added)

Feb. 12, 1996 JUDGMENT "against the plaintiff".

Feb. 22, 1996 Petitioner's Objections to Judgment.

The Petitioner entitled this motion of objections as "Plaintiff Requests Relief From Void Judgment". "The court has deliberately abused judicial discretion by distorting and falsely representing the Complaint . . . The

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[1] See p. 41a.

plaintiff objects to the deliberate deprivation . . . of access to the courts, an impartial tribunal, and the right to counsel. (The tort by the defendants, and now, the tort by the court itself, has made it impossible for the Plaintiff, with his limited means, to find counsel . . . Bonsey's act, is . . . seen to be an essential material fact in the ultimate issue of Count III, just as it was an essential material fact in the ultimate issue of Count I. This one act by Defendant Bonsey determines the said ultimate issue in both the constitutional tort of Count I and the tort in Count III."

Mar. 11, 1996 District Court sends letter stating that Petitioner's motion of objections to the Judgment "has been endorsed by Judge Brody this date as denied."

Mar. 11, 1996 Amended Judgment

" . . . in accordance with the endorsement on Plaintiff's request for relief from judgment, [i.e. objections to the judgment] entered by the Court on March 11, 1996, Judgment is hereby entered for [all] defendants . . . against the plaintiff."

Mar. 22, 1996 Petitioner files petition to Appeals Court for the First Circuit for Writ of Mandamus " . . . requiring the District Court accept the . . . duty of accepting subject matter jurisdiction."

April 10, 1996 Petition for Mandamus is denied.

May 31, 1996 Appeal to the Appeals Court for the First Circuit. "The scope of review must take into account that the Rooker-Feldman Doctrine[2] has been so applied as to supercede the Fourteenth Amendment, because the

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[2] Hereinafter denoted as R-F-D.

doctrine was used to block a claim-of-right to receive remedy for the deprivation due process. [by the nexus conspiracy] the scope of the inquiry must also include the fact that the basis for the application of the Rooker-Feldman Doctrine was not just mere mistaken characterization, but intentional falsity."

In the appeal, the Petitioner told the Appeals Court, that "District Court's refusal to adhere to the Supreme Court's directive, [**Hagans v. Lavine**] that the dispositive claim be taken care of first, is error . . . "

July 22, 1996 "Notice" from Appeals Court states that "oral argument is not needed in this case."

July 27, 1996 Petitioner requests an oral argument to discuss "Has Bonsey been made immune from future litigation by res judicata from a simulated Summary Judgment? [that was not finally determined] . . . hearing is required to clarify . . . federal questions in Count III." [Request denied]

Aug. 27, 1996 The Affirming Judgment by the Appeals Court.

Sept. 9, 1996 Petitioner requests a Hearing In Banc.

Oct. 8, 1996 The "**amended opinion**" is issued by Appeals Court.

The Appeals Court, in the second paragraph of the "amended opinion," adjudicates the Summary Judgment for Bonsey, thereby terminating claim under §870 with res judicata. The Summary Judgment was allowed to lay dormant by District Court before the appeal process, and is then revived after the appeal process by the Appeals Court.

In the "amended opinion" appears the statement that "no other state law claim was sufficiently pled against either of those defendants, [Bonsey and Leighton]" Other "state claims" were never mentioned before, either by District Court or the Appeals Court, regarding Bonsey, (or Leighton). It can only be inferred that the "state claims" must refer to the charges of conspiracy, fraud, and false statements against Bonsey. District Court had only considered perjury (albeit the Complaint did not charge Bonsey with perjury) against Bonsey. It appears then, that the Appeals Court, within the "amended opinion," expands the Summary Judgment to include all of the charges against Bonsey, making the "adjudication" of Bonsey under §870 complete. First Circuit expressly states that they do not intend to adjudicate, because "abstention may be appropriate . . . "

From the moment that Leighton penned the summons for the Complaint, he never said one word in his own behalf. The court never referred to him, prior to the "amended opinion." Then, in the "amended opinion," Leighton is dismissed, because "the allegations were too insubstantial and conclusory." There is no indication given that this dismissal is a Summary Judgment, or that the Petitioner was given any notice or chance to present photographic proof of the perjuries committed by Leighton.

Oct. 26, 1996 Petitioner's Objections to the "amended opinion."

" . . . the panel of six [Justices] wanted to ensure the policy of absolute immunity, [for the two state judges] and so supplied a "poison pill" for any future §870 claim,

by giving a determination for Bonsey's Summary Judgment in the Amended Opinion." The Appeals Court did not respond. [Petitioner] requests that First Circuit's Judgment, Opinion, and Amended Opinion, be published . . . "

Nov. 5, 1996 ORDER denying request for publication.

Nov. 22, 1996 Petitioner's Objections to the Nov. 5, '96 Order. "If the First Circuit had known, that this instant case had to be published, there would have been a salutary check and balance to the First Circuit's policy of judicial usurpation to maintain absolute power and absolute immunity for all judges against civil rights claims . . . This determination, or "adjudication" of an "ad personam" Summary Judgment, [for Bonsey] attacking the "ad rem" claims, distorts the nature and context of the claims, and prevents the inquiry that is demanded."

Defendants Collier, Tyler, and Tremblay are dismissed by District Court's Local Rule 19(c). [If a motion is not responded to within 10 days, objections are deemed waived].

REASONS FOR GRANTING THE WRIT

The following is an explanation of how federal court has created and maintained a direct conflict between the Rooker-Feldman doctrine and the federal statute 42 U.S.C.S. §1983, in order to deprive the Petitioner of his property interest in 42 U.S.C.S. §1983.

Step 1. First, it is necessary to know that the Appeals Court for the First Circuit has acknowledged the

existence in the Complaint, of a distinct non-frivolous claim under 42 U.S.C.S. §1983, by the following:

"Those [civil rights] claims were inextricably intertwined with review of the state court proceedings . . . " (p. 4a)

Step 2. The non-frivolous Complaint gives the Petitioner a right of entitlement to §1983 and he now possesses a property interest in §1983.

Step 3. The Appeals Court recognizes two distinct and separate claims that intertwine: one claim under §1983 for civil rights violations by Smith and Roberts, which appears on the face of the Complaint, and a second claim for appellate review. (which does not appear on the face of the Complaint)

Step 4. The court receives a motion-to-dismiss from Justices Smith and Roberts, stating that claim under §1983 is not cognizable "because federal District Courts do not inquire into the correctness of the decisions of a state court . . . "

(Petitioner was not asking for inquiry into miscues, but into a fixed trial.)

Step 5. Factors to be considered are:

Counts I and II contain constitutional questions under §1983, and Count III (as ruled by court) is a statutory question. Also, the demand statements in Counts I and II, are included under Count III. Since Count III is dispositive of Counts I and II, then Count III should be decided first.[3]

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[3] Hagans v. Lavine, 415 U.S. 528, 543.

If the court follows the counsel of Hagans, and the court remands Count III to state court, or decides Count III, then Petitioner's property interest in §1983, would remain intact; Smith and Roberts are necessary to show corrupt motive of Tremblay in resolving §870. But the court chooses to disregard Hagans and pits the claim for review against the claim for civil rights. The issue is no longer a choice between whether the claims are cognizable or not, but the court, by the decision to ignore Hagans, has changed the issue to one of primacy. The functional characteristics of R-F-D no longer apply. The question now has become, which is the superior: R-F-D or §1983? Is it to be the state, or is it to be the federal, that is to be chosen. The court returns to the stage prior to the Hagans decision, and applies R-F-D, as if its proper function still existed.

Step 6. In order to maintain the superiority of R-F-D over §1983, it was necessary for federal court to prevent the Petitioner from pursuing his claims in state court. This was accomplished as follows. Defendant Bonsey's motion-to-dismiss was converted to a Summary Judgment (Rule 56) sua sponte. The scope was restricted to one single question: Was Bonsey a witness for the Plaintiff/Petitioner at the Tremblay trial?[4] The restriction to the one question, not only prevented the Petitioner from presenting his evidence, but also set him up for the case law from the Spickler case,[5] which stated that a plaintiff cannot sue his own witness for perjury. All district court had to do now, was to claim that the

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[4] Tremblay v. DiCicco, 628 A.2d 141 (Me. 1993).

[5] Spickler v. Greenberg, 544 A.2d 469 (1994).

> Complaint charged Bonsey with perjury. Petitioner tried to make his Complaint even more explicit than it was, by asking leave to amend the Complaint, and spell it more loudly, that Bonsey was not being charged with perjury.[6] District Court remained silent. Petitioner's response to the Summary Judgment was to file a "Death Knell" Notice of Appeal. District Court did not determine the Summary Judgment. It was left to the Appeals Court to perform this deed, in the "amended opinion."

In addition to making the determination of the Bonsey Summary Judgment, with regard to the charge of perjury, the Appeals Court adds on the true charges against Bonsey, (conspiracy, fraud, and false statements) by referring to these charges as "no other state claim was sufficiently pled." Thus, previous to the "amended opinion," the district court never acknowledged any other charge against Bonsey, than the false charge of perjury. Then, for the first time, within the "amended opinion," all of the true charges against Bonsey were "considered" and dismissed, with prejudice against the Petitioner, and with no opportunity to present evidence against Bonsey. With all of the charges now "adjudicated" for Bonsey, the claim under §870 is dead with res judicata, without any chance for the Petitioner to offer his evidence. The property interest in the claim under §1983 is denied.

Thus, due to a contrived direct conflict of laws, between R-F-D and §1983, the Petitioner loses his property interest in §1983, loses his chance to retrieve his property and property deed, and the major part of life's

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[6] See p. 41a.

savings invested in property that is now unmarketable, due to actions of the defendants.

CONCLUSION

Federal Court clearly ignored the counsel of Hagans, and clearly made it manifest, that justice was not the objective of the court. The decision to decide the constitutional questions first, (Counts I and II) instead of deciding the dispositive statutory question, (Count III) clearly showed where the heart really was. If the Petitioner were to go into the covert Summary Judgment, performed within the "amended opinion," or to go into the Summary Judgment for Defendant Leighton, (also within the "amended opinion") would still not give the clear picture of the decision to ignore the counsel of the Supreme Court, in Hagans.

The Petitioner retired early from teaching (25 years) to pursue a dream of renovating old houses. He invested in property next to Defendant Tremblay, and he walked into an ambush of fraud, that extended into Superior Court, Maine, and then on into federal court. The Petitioner has had to give up his dream, because most of his savings are in that property next to Tremblay, and the Petitioner has had to devote himself to learn some law, so that he can get back his savings. This story is told, here in this conclusion, to alert this Court, of the necessity of the courts to be mindful of the importance to this country, that small investors, like myself, can go to another state, and know that they will be treated equally with the citizens of that state. This petitioner will never stop his

fight for justice in this case, so that everyone will know, whether or not they will be secure, in their travels to Maine, or any other state. The Supreme Court cannot rationalize away their duty to supervise the lower courts, especially when the lower court has a clear cut decision to make, in the name of justice.

Respectfully submitted,

JOSEPH P. DICICCO
Petitioner Pro Se
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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-1286

JOSEPH P. DICICCO,
Plaintiff – Appellant

v.

EARL A. BONSEY, ET AL.,
Defendants – Appellees

JUDGMENT

Entered: August 27, 1996

This cause came on to be submitted on the briefs and the original record on appeal from the United States District Court for the District of Maine.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: Pursuant to Local Rule 27.1, the district court's judgment is affirmed.

By the Court:

WILLIAM H. NG

Clerk.

cc: Joseph P. DiCicco, Pro Se
Carl F. Rella, Esq.
James M. Bowie, Esq.
Paul Stern, Esq.

[Loc. R. 27.1 SUMMARY DISPOSITION. At any time, on such notice as the court may order, on motion of appellee or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented.

In cas [sic] of obvious error the court may, similarly, reverse. Motions for such relief should be promptly filed when the occasion appears, and must be accompanied by four copies of a memorandum or brief.]

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-1286

JOSEPH P. DICICCO,
Plaintiff, Appellant,

v.

EARL A. BONSEY, ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF MAINE

[Hon. Morton A. Brody, *U.S. District Judge*]

Before

Selya, Cyr and Boudin,
Circuit Judges.

Joseph P. DiCicco on brief pro se.

Carl F. Rella, Julie D. Jenkins and *Rella, Dostie & Tucker, P.A.*, on brief for appellee Robert Tremblay.

James M. Bowie and *Thompson & Bowie* on brief for appellee Sandra Hylander-Collier.

Andrew Ketterer, Attorney General, and *Paul Stern*, Assistant Attorney General, on brief for appellees Justices Roberts and Smith.

August 27, 1996

Per Curiam. Upon careful review of the briefs and record, we conclude that the district court properly dismissed appellant's complaint, essentially for the reasons stated by the magistrate judge and the district court. We add only the following comments.

Contrary to appellant's arguments, we perceive no error in the dismissal of appellant's claims against the Maine state court judges. Those claims were inextricably intertwined with review of the state court proceedings, and so the district court lacked subject matter jurisdiction to consider them. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *Lancellotti v. Fay*, 909 F.2d 15, 17 (1st Cir. 1990).

Further, we perceive no abuse of discretion in the district court's decision to dismiss appellant's remaining state claims, after his federal claims were dismissed. *See* 28 U.S.C. § 1367(c)(3); *see also* 28 U.S.C. § 1367(d).

Affirmed. See 1st Cir. Loc. R. 27.1.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-1286

JOSEPH P. DICICCO,
Plaintiff, Appellant,

v.

EARL A. BONSEY, ET AL.,
Defendants, Appellees.

Before
Torruella, *Chief Judge*,
Selya, Cyr, Boudin, Stahl and Lynch,
Circuit Judges.

ORDER OF COURT

Entered October 8, 1996

We treat the filing entitled "Appellant Petitions for Hearing in Banc" as both a motion for rehearing under Fed. R. App. P. 35 and as a motion for hearing en banc under Fed. R. App. P. 40. We *grant the motion for rehearing in part*, to the extent that we amend the opinion issued on August 27, 1996, by inserting the following after the third paragraph of that opinion:

> Even to the extent that the district court may have had diversity jurisdiction over appellant's remaining state claims, we perceive no abuse of discretion in the decision to dismiss. *See Lundborg v. Phoenix Leasing, Inc.*, 91 F.3d 265,

272 (1st Cir. 1996) (dismissal may be approved on grounds other than those stated by district court).

Specifically as to the few remaining claims against the two defendants not already dismissed, no perjury claim was stated against defendant Bonsey, because he was appellant's own witness. *See Spickler v. Greenberg*, 644 A.2d 469, 472 (Me. 1994) (under Maine's unique civil perjury statute, 14 M.S.R.A. § 870, a party cannot sue his own witness). Also, no perjury claim was stated against defendant Leighton, because the allegations were too insubstantial and conclusory. *See id.* (to succeed under § 870, the plaintiff must show that the witness lied and knew his testimony was false).

And no other state law claim was sufficiently pled against either of those defendants, because the allegations were wholly speculative and conclusory. *See Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996) ("bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like need not be credited"). *See also Lundborg*, 91 F.3d at 272-73 (abstention may be appropriate where appellant's "suit is effectively an attempt to undo a preexisting, final judgment of a state court based upon matters pertaining solely to the conduct of prior litigation in that court").

The motion for rehearing is *denied in all other respects*. The motion for hearing en banc is also *denied*.

We treat the filing entitled "Appellant Appeals the Disposition of the Judgment" as a motion for relief from the operation of Fed. R. App. P. 39, and as such it is *denied*.

Appellant's motion for "Stay of Mandate and of any Costs Pending Petition for [Certiorari]" is *denied*. *See* Fed. R. App. P. 41(b). The mandate will issue in accordance with Fed. R. App. P. 41(a).

By the Court:

WILLIAM H. NG, Clerk

By: Illegible
Chief Deputy Clerk

[cc: Messrs. Stitham, Johnson, Bowie, Rella, Jenkins and Mr. DiCicco; and Cert. cc: U.S.D.C. for the District of Maine and Judge Brody]

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSEPH P. DICICCO, Plaintiff	)	
v.	)	Civil No.
EARL A. BONSEY, et al., Defendants	)	95-0153-B

RECOMMENDED DECISION

(Filed Aug. 31, 1995)

This action arises out of a boundary dispute which was litigated in the Maine State Courts during 1992 and 1993. Plaintiff's Complaint, while not a model of clarity, reveals that he is unhappy with the results of that litigation. Two of the named Defendants in this action are a former Justice with the Maine Superior Court and a Justice of the Maine Supreme Judicial Court. As to these Defendants ["SMITH" and "ROBERTS"], Plaintiff seeks an Order establishing a boundary line in accordance with Plaintiff's view of his deed. Defendants Smith and Roberts now move to dismiss the action against them on the grounds that this Court has no authority to "correct" a judgment of a state court of competent jurisdiction.

Plaintiff has responded to the Motion to Dismiss in a document entitled "Plaintiff's Notification of Violation of Rule 11(b)(1), [Fed. R. Civ. P.]." Plaintiff argues that he is not asking this Court to inquire into the correctness of the state court decision. However, he then proceeds to explain that the decision contained a fundamental error,

apparently depriving him of his property without due process of law.[1]

The Court concludes that Plaintiff's claim is not cognizable in this Court. This Court simply does not have jurisdiction "over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." *District of Col. Court of App. v. Feldman*, 460 U.S. 462, 486 (1983). Accordingly, Defendants Smith and Roberts' Motion to Dismiss should be GRANTED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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[1] Plaintiff does not specifically identify the constitutional right he alleges was violated by the state court action.

/s/ Eugene W. Beaulieu
Eugene W. Beaulieu
United States
Magistrate Judge

Dated in Bangor, Maine on August 31, 1995.

ENTERED ON DOCKET 9-15-95

UNITED STATES DISTRICT COURT
District of Maine

JOSEPH P. DICICCO, Plaintiff	)	
vs.	)	Civil No.
EARL A. BONSEY, et al	)	95-0153-B
Defendants	)	

ORDER AFFIRMING THE RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

(Filed Sept. 15, 1995)

The United States Magistrate Judge filed with the Court on August 31, 1995, with copies to counsel, his Recommended Decision. Plaintiff filed on September 14, 1995 his objection to the recommended decision and Defendants Roberts and Smith filed their responses to the objections on September 13, 1995. I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Magistrate's Judge's Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision, and determine that no further proceeding is necessary.

1. It is therefore *ORDERED* that the Recommended Decision of the Magistrate Judge is hereby *ADOPTED*.

2. It is further *ORDERED* that Defendants Smith and Roberts' Motion to Dismiss is *GRANTED*.

/s/ Morton A. Brody
Morton A. Brody
U.S. District Judge

Dated at Bangor, Maine this 15th day of September, 1995.

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSEPH P. DICICCO, Plaintiff	)	
v.	)	Civil No. 95-0153-B
EARL A. BONSEY, et al., Defendants	)	

ORDER

(Filed Oct. 30, 1995)

Defendant Earl A. Bonsey has filed a Motion to Dismiss the above-captioned matter, or in the alternative for a More Definite Statement pursuant to Federal Rule of Civil Procedure 12. The Court finds that the grounds presented in support of the Motion to Dismiss are more properly raised in a motion for summary judgment pursuant to Rule 56. Specifically, Defendant asserts that Plaintiff may not prevail against him under 14 M.R.S.A. § 870 because Defendant Bonsey testified at the state trial that is the subject matter of this action as a witness for Plaintiff. According to Defendant, the statute provides a cause of action against a perjured witness only when that witness testified for the adverse party. Def. Memo. at 2 (citing 14 M.R.S.A. § 870; *Spickler v. Greenberg*, 644 A.2d 469, 472 (Me. 1994).

Accordingly, it is hereby ORDERED that the Motion filed by Defendant Bonsey on September 1, 1995 shall be treated as one for summary judgment pursuant to Federal Rule of Civil Procedure 56. Defendant shall supplement the record by filing an affidavit or other evidentiary-

quality materials in support of the assertion contained in the Motion to Dismiss. The supplementation shall be filed no later than 10 days from this date, after which Plaintiff shall respond as provided in Federal Rule of Civil Procedure 56 and Local Rule 19(c).

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSEPH P. DICICCO, Plaintiff	)	Civil No. 95-0153-B
v.	)	Notice of Appeal
EARL A. BONSEY, et al., Defendants	)	

Notice is hereby given that Joseph P. DiCicco, pro se, (Plaintiff) in the above named case, hereby appeals to the United States Court of Appeals for the First Circuit from an ORDER, DATED Oct. 30, 1995, which converted a Motion To Dismiss, into a Motion for Summary Judgment. Due to nature of the ORDER, And due to the circumstances of the case, said ORDER strikes the "Death Knell" of the entire action and Complaint by the Plaintiff. It is necessary that the Plaintiff fule [sic] this appeal now, rather than be forced to file an affidavit for a contrived Summary Judgment, which would only confuse the finality of the ORDER. (see Plaintiff's "PLAINTIFF REQUESTS REASONS FOR THE ORDER OF Oct. 30, 1995 and Reconsideration," for explanation of the finality nature of the said ORDER.) (dated November 7, 1995)

Appeal is also being made to all of the District Court's orders, that have dismissed some of the defendants.

Dated this 10th day of November, 1995

/s/ Joseph P. DiCicco
Joseph P. DiCicco
20 North Evarts Avenue
Elmsford, NY 10523
914-592-6975

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSEPH P. DICICCO, Plaintiff	)	Civil NO. 95-0153-B
v.	)	
EARL A. BONSEY, et al., Defendants	)	

ORDER

(Filed Nov. 15, 1995)

The record in this matter reflects that on October 30, 1995 the Court entered an Order in which it Ordered the Motion to Dismiss, filed by defendant Bonsey on September 1, 1995, be treated as one for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, and parties to file affidavits and other necessary papers not later than November 17, 1995.

The record further reflects that on November 13, 1995 the pro se Plaintiff in this matter filed a document entitled "Notice of Appeal" from the Court's Order of October 30, 1995. Additionally, the Plaintiff seeks to Appeal "all of the District Court's orders, that have dismissed some of the defendants". No final judgment has entered, nor has the Court filed an Order pursuant to Federal Rules of Civil Procedure 54(b) directing entry of final judgment.

The Court is satisfied, that after having carefully considered the substance of the Notice of Appeal, the

appeal is not from an order which is either final or appealable and that it is impermissible and frivolous.

The Notice of Appeal is accordingly STRICKEN and the Clerk is directed to take no further action with respect to it. See *United States v. Ferris*, 751 f.2D 436 (1st Cir. 1984); *Hodgson v. Mahoney*, 460 F.2d 326 (1st Cir. 1972).

SO ORDERED.

/s/ Morton A. Brody
MORTON A. BRODY
U.S. District Judge

Dated at Bangor, Maine this 15th November, 1995.

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSEPH P. DICICCO, Plaintiff	)	Civil No. 95-0153-B
v.	)	
EARL A. BONSEY, et al., Defendants	)	

RECOMMENDED DECISION

(Filed Jan. 24, 1996)

Plaintiff filed this multi-count Complaint on July 13, 1995. Counts I and II state federal causes of action, and the remaining Counts arise under state law. The only Defendants named in Counts I and II are Jack Smith, Sandra Hylander Collier, and David S. Roberts. Inasmuch as these defendants' Motions to Dismiss have now been granted by the Court, see Docket Numbers 15 and 55, no federal claims remain in the action. Accordingly, I hereby RECOMMEND the Court DISMISS the action for want of subject matter jurisdiction. *Astrowsky v. First Portland Mort. Corp.*, 887 F. Supp. 332, 337 (D. Me. 1995).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being

served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

JOSEPH P. DICICCO, Plaintiff	)	Civil No. 95-0153-B
vs.	)	
EARL A. BONSEY, et al., Defendants	)	

ORDER AFFIRMING THE RECOMMENDED DECISIONS OF THE MAGISTRATE JUDGE

(Filed Feb. 12, 1996)

The United States Magistrate Judge filed with the Court on January 24, 1996 his Recommended Decision recommending the Court dismiss the action for want of subject matter jurisdiction. Plaintiff has objected and defendant Collier has responded to the objection. I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Magistrate's Judge's Recommended Decision; and I concur with the recommendation of the United States Magistrate Judge for the reasons set forth in his Recommended Decision, and determine that no further proceeding is necessary.

1. It is therefore *ORDERED* that the Recommended Decision of the Magistrate Judge is hereby *AFFIRMED*.

2. It is further *ORDERED* that this action is DISMISSED for want of subject matter jurisdiction.

Dated at Bangor, Maine this 12th Day of February, 1996

/s/ Morton A. Brody
Morton A. Brody
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSEPH P. DICICCO, Plaintiffs	)	Civil No. 95-0153-B
v.	)	
EARL A. BONSEY, et al., Defendants	)	

JUDGMENT

(Filed Feb. 12, 1996)

In accordance with the Orders Affirming the Recommended Decisions of the Magistrate entered by the Court on February 12, 1996, January 24, 1996, and September 15, 1995,

Judgment is hereby entered for the defendants, Earl A. Bonsey, James Leighton, Robert P. Tremblay, Judge Jack O. Smith, Justice David S. Roberts, Sandra Hyland Coller and Earle S. Tyler, Jr., as against the plaintiff.

Dated at Bangor, Maine this 12th day of February, 1996.

WILLIAM S. BROWNELL, CLERK

/s/ Harriett D. Jefferson
Harriett D. Jefferson
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSEPH P. DICICCO, Plaintiff	)	Civil No. 95-0153-B
v.	)	
EARL A. BONSEY, et al., Defendants	)	

AMENDED JUDGMENT

(Filed March 11, 1996)

In accordance with Orders Affirming the Recommended Decisions of the Magistrate entered by the Court on February 12, 1996, January 24, 1996 and September 15, 1995, and in accordance with the endorsement on Plaintiff's request for relief from judgment, entered by the Court on March 11, 1996,

Judgment is hereby entered for the defendants, Earl A. Bonsey, James Leighton, Robert P. Tremblay, Judge Jack O. Smith, Justice David S. Roberts, Sandra Hyland Collier and Earle S. Tyler, Jr., as aginst [sic] the plaintiff.

Dated at Bangor, Maine this 11th day of March, 1996.

WILLIAM S. BROWNELL, CLERK

/s/ Harriett D. Jefferson
Harriett D. Jefferson
Deputy Clerk

SUBSTANTIAL PART OF THE COMPLAINT

The following substance of the Complaint is given to show that this instant case does not arise out of a boundary dispute, or that there is a claim for appellate review, but on the contrary, what is seen, is a claim that is the very antithesis of a claim for appellate review. What is seen in the Complaint are factual allegations with substantial evidence, that the state court judges saw to it that no adjudications were to take place at all, from the very beginning of the proceedings.

(¶ 5) "42 USCS §1983 is invoked for COUNT I, because of the conspiracy of Judge Jack O. Smith, (unofficial capacity) and plaintiff's ex-attorney, Sandra Hylander Collier, under color of state law, causing the deprivation of due process of law under the Fourteenth Amendment, and deprivation of witnesses and new evidence, under the Sixth Amendment of the Constitution of the United States, subjecting the plaintiff to the loss of land, land value, money, and good reputation."

(¶ 6) "[Petitioner] wrote motions for new trial, including an "Amendment" to the motion for new trial, with newly discovered evidence that Tremblay had intentionally perpetuated the misnomer into the Bonsey-to-Tremblay deed, which misnomer . . . gave rise to the claimed latent ambiguity, upon which the Judgment, in Tremblay's favor, was based. A new evidence document in the Amendment, the Richardson deed, showed . . . that a latent ambiguity cannot physically exist . . . The newly discovered evidence was suppressed, under color of state law. (COUNT I) . . . After the plaintiff wrote the 'Amendment,' which reported the falsification of the Tremblay

deed, perjury, and the impossibility of the latent ambiguity, (showing the Judgment to be in fundamental error) the plaintiff retained Sandra Hylander Collier, Esq. . . . Ms. Collier wrote a "Further Amendment," to amend the plaintiff's Amendment."

(¶ 7) "Ms. Collier provides . . . in her 'Further Amendment' . . . that the new evidence was really just 'additional' evidence."

(¶ 14) "Ms. Collier's innuendo was that the plaintiff was a vandal of the litigation process."

(¶¶ 34-36) "Issue: Did the taped conversation between the plaintiff and Ms. Collier make express, the nexus, (Between Judge Smith and attorney Collier) in that the betrayal was specifically to conceal the fundamental error in the decision of Judge Smith?"

(¶ 34) About one month after the post-trial hearing, [that was called to hear the Amendment containing the new evidence] a taped conversation between the plaintiff and Ms. Collier, makes express, that the most important concern of the plaintiff was the fundamental error in the judgment. Ms. Collier's words and tone, make it express, that she was cognizant of the plaintiff's concern."

(¶ 36) Since the taped conversation of ¶ 34 makes it clear that the latent ambiguity, and the fundamental error were a primary concern of the plaintiff, it is manifest, that Ms. Collier did not explain the real meaning of the Further Amendment, nor did she even show him a copy, or tell him to read it carefully.

(¶¶ 20-26) "Issue: Was the procedural scheme installed in the Further Amendment, a direct invasion of Constitutional rights, done under color of state law, to deprive the plaintiff of constitutional rights, and does the scheme show the nexus between the judge and attorney?"

(¶ 20) In order to suppress the Amendment containing the Richardson deed, it was necessary to do so without any inquiry into the 'terms' of the [Richardson] deed, because said deed literally . . . places the [cause of the latent ambiguity] off of the properties, making the very basis of the judgment, a physical impossibility."

(¶ 21) "Since the Amendment belonged under Rule 60(b) M.R.C.P., . . . a hurdle presented itself, [to the plan of the nexus] because Rule 60(b) explicitly requires that the 'terms' of the motion [Amendment] must be inquired into . . . "

(¶ 22) "Ms. Collier makes explicit in the Further Amendment, that only Rule 59(a) is to be used) . . . Plaintiff was given the idea that he could show the photographs proving that he did not remove the 'flowers' supposedly planted by Tremblay."

(¶ 23) "The stipulation by Ms. Collier, that only Rule 59(a) was to be used, was an action, under color of state law, since the plaintiff's Amendment already qualified for both Rule 59(a) and Rule 60(b). It is alleged that the procedural scheme, adopted in Ms. Collier's Further Amendment, was for the purpose of providing Judge Smith the convenience of not having to inquire into the 'terms' of the Amendment, as would have been required by Rule 60(b)." [and thus require that the terms of the Richardson deed be looked at]

(¶¶ 16-19) "Issue: Whether there is shown a nexus between Ms. Collier's preliminary actions in preventing witnesses and documentation from appearing at the hearing and the sending of the notice [by Judge Smith] for the hearing . . . to Ms. Collier's office just after she left on [3-week] vacation."

(¶ 16) "Ms. Collier made no effort to ask for a continuance. [Despite receiving the notice with the loss of 3 weeks] Plaintiff offered to write out questionnaires. [to the 5 new evidence witnesses] Ms. Collier, advised that the questionnaires be not notarized, as she would place their responses on "official" paper.

(¶ 17) The only response [to the questionaire] [sic] was from Paul and Eleaner Knudson. (the 'Knudson letter')[1] Ms. Collier revised the Knudson letter, not telling the plaintiff, and returned the revision to the Knudsons for notarization. The Knudsons refused to notarize the revision."

(¶ 24) At the hearing, Judge Smith volunteered the contention that Tremblay did not induce the plaintiff to remove the 'flowers.' Despite fact that the [non-notarized] 'Knudson letter' (¶ 17) rebuts Judge Smith's contention, the 'Knudson letter' is set aside, because it was not notarized, [as Collier intended] according to the explicit instruction in Rule 59(a). The [Knudson] letter, although rebutting a contention as to an ultimate issue, is dismissed, and thereby, is an action, under color of state law."

(¶ 18) When Bonsey did not respond to the questionaire, plaintiff suggested that he be subpoened. Ms. Collier promised to subpoena him, but a few days later, she

responded that she did not subpoena Bonsey. Not hearing from Bonsey, and not being able to locate Ms. Collier, the plaintiff obtained an official subpoena form and sent that out to Bonsey on Sept. 9, 1992. Plaintiff paid the sheriff $20 extra to ensure on time delivery, for the short time [to Sept. 15] that remained."

(¶ 19) There are 5 witnesses listed in the Amendment, for the new evidence of fraud. Not one witness was subpoened by Ms. Collier. Had not the plaintiff initiated communication with the witnesses via the questionnaires, plaintiff alleges that there would not have been made any communication at all."

(¶ 51) Ms. Collier kept postponing a preparation conference [with the Petitioner] until the very day of the post-trial hearing. The plaintiff prepared two review sheets, so as to make the prep session, that was to take place, just before the hearing, to be as efficacious, as possible. The perjuries by Tremblay were outlined. Not giving any indication of what she was about to do, after reading the review sheets, Ms. Collier never mentioned the word, 'perjury,' throughout the hearing."

(¶ 33) "Issue: Since the major portion of the post-trial hearing was taken up by discussion of DiCicco's 'wilful' trespass of removing 'flowers,' [that Tremblay planted on Petitioner's property, in his attempt to take over land by adverse possession] and

since, the plaintiff had photographs to show that Tremblay lied about the 'flowers,' and

since Ms. Collier knew that the plaintiff had the exculpatory photos, and

since Ms. Collier did not even mention the photos to the judge, when he had described DiCicco's trespass as 'outrageous,' or when Tremblay's lawyer assailed DiCicco about the trespass, THEN, how could Ms. Collier not receive a prior guarantee from the judge, that DiCicco would not be called to the witness stand, exposing the betrayal of her client?"

(¶ 33) The photographs that the plaintiff possesses, not only show the perjury of Tremblay, regarding the trespass, in COUNT III, but also show the nexus and plan of Judge Smith and attorney Collier, to invade the Sixth Amendment rights of the plaintiff. Ms. Collier knew that the plaintiff, her former client, had exculpatory photographs, yet remained silent throughout the flagellation of the plaintiff at the hearing, wherein the judge assailed the conduct of DiCicco as outrageous. Tremblay's lawyer repeatedly attacked the plaintiff for the trespass. Through it all, Ms. Collier remained silent, yet knowing that her client had the photographs to prove his innocence. These attendant circumstances can only infer that Ms. Collier had an iron-clad guarantee, that her client would never get the chance to show the photographs at the hearing. This almost absolute inference shows the nexus and plan, before the hearing ever got started."

(¶ 52) "The fact that the plaintiff was given no preliminary review of what he would be asked by Ms. Collier on the witness stand, was proof, that Ms. Collier knew that I was not going to be allowed to take the stand, no matter what happened."

(¶¶ 36A-37) "Issue: Was the fact that Ms. Collier's act of not handing in a brief [for which she was offered the

opportunity at the post-trial hearing] to argue the wilful aspect of the trespass, an indication of the nexus and plan between Judge Smith and attorney Collier?"

(¶ 36A) Plaintiff's Amendment clearly states that the land dispute and the fraud were 'inexorably interwoven.' There is no evidence in the Tremblay v DiCicco case, which does not relate to the fraud, whether the evidence be classified as new, or 'additional,' it would be related to the fraud. How could Ms. Collier say anything about the removal of the 'flowers,' without referring to the tort under COUNT III, and without referring to the exculpatory photographs. If fraud or the tort in COUNT III was entertained at the post-trial hearing, then the Richardson deed would gain its entrance, and in turn, the exposure of the fundamental error in Judge Smith's decision in the case. The fact that Ms. Collier said nothing in behalf of her client by NOT handing in a brief, was not due to negligence, for two reasons. (1) Any discussion about the 'flowers' would usher in the fraud or tort, and thereby give entrance to the Richardson deed and the exposure of the fundamental error in the judgment. (2) If Ms. Collier was not able to write the brief because of time, [she] could have asked her client to write the brief. [If her client was able to write the Amendment, he was also able to write the brief.]"

(¶ 37) The taped conversation, (¶ 34) showed that Ms. Collier was cognizant of the latent ambiguity, and the fundamental error, and therefore that was the reason why she could not hand in a brief. It would usher in the Richardson deed."

(¶¶ 38-43) "Issue: Does the 'not filed' motion show the nexus.

[Between Judge Smith and Collier]

(¶ 38) Sometime . . . [prior to post-trial hearing] . . . the plaintiff wrote out a motion for Ms. Collier, detailing mathematical evidence of why defendant Robert Tremblay knew of the existence of the misnomer in the Bonsey deed, prior to Tremblay's authorship of the Bonsey-to-Tremblay deed, and that he had intentionally perpetuated the misnomer into his own deed. When Ms. Collier read the motion, she wrote, 'not filed' upon it."

(¶ 39) "At the hearing, Judge Smith asked Ms. Collier whether or not the Bonsey-to-Tremblay deed was any different from the Webb-to-Bonsey deed. The purpose of the question was to exonerate Tremblay from any wrongdoing in regard to plaintiff's accusation in the Amendment, that Temblay [sic] had falsified his deed. Judge Smith implied that if there was no difference, then Temblay [sic] was innocent of any kind of falsification of the deed. Ms. Collier replied that there was no difference, not asking the court for time to check to see if there was a difference. There was, in fact, a big difference. The Tremblay deed made it more explicit, that the western boundary was a particular "A low water mark."

(¶ 40) "When Ms. Collier was asked the question in ¶ 39, she did not give the answer of the 'not filed' motion. (¶ 38) To have done so, would have ushered in the fraud, and thereby, the Richardson deed. Instead of giving the Judge the mathematical evidence of why Tremblay knew that the misnomer existed prior to his authorship of the deed, Ms. Collier gave an incoherent talk for two pages of

the transcript, in which she had the plaintiff talking to Bonsey, years before the plaintiff ever came to Maine. It is alleged that the incoherency was planned, since the 'not filed' motion was easy to remember, as it was a clear exposition of the falsification. [of the deed by Tremblay – see next ¶] The incoherent talk provided an easy accommodation for Judge Smith to exonerate Tremblay of the falsification of the deed, without having to probe into the area of fraud, [which would have happened if he were to question] Bonsey, who was present and available, and the most logical witness to have asked the question of ¶ 39.

(¶ 41) "Tremblay testified that he 'assumed' that there was no southeast corner to the lot he was to buy from Bonsey. If that were so, then it would have been possible to get to the road [from the Bonsey-to-Tremblay property] without going through Roger W. Smith's property. Since Tremblay did not take the alternate route [to the road] through the no-man's land that Tremblay claimed, [to have existed] and purchased the right-of-way from Smith, meant that he knew he could not go through the [Tremblay] no-man's land. There is, therefore, a 'de facto' southeast corner, and since this 'de facto' southeast corner is not the 'southwest corner of Walter A. Smith,'[which is denoted on the Bonsey-to-Tremblay deed] Tremblay knew that his Bonsey-to-Tremblay deed is defective. This paragraph is what was the 'not filed' motion was, and it should have been given as the answer, by Ms. Collier, instead of the tortuous anachronistic 2-page response that Ms. Collier did give. [that had nothing to do with the 'not filed' motion]"

(¶¶ 27-32) "Issue: When Ms. Collier made it explicit at the hearing that DiCicco was the PRIMARY witness for

the new evidence, was this a confirmation of the statement of libel in the Further Amendment that DiCicco was lying when he wrote up his Amendment and was this a direct invasion of the Sixth Amendment in depriving DiCicco of his right to question and have as a witness, defendant Earl A. Bonsey, who was PRESENT AT THE HEARING."

(¶ 27) "Plaintiff's Amendment expressly states that defendant Earl A. Bonsey and defendant Robert P. Tremblay, intentionally perpetuated the misnomer into the Bonsey-to-Tremblay deed, which misnomer created the "not honored" point that caused the Judgment based latent ambiguity. The new evidence in the Amendment also accused Tremblay of perjury. Ms. Collier's Further Amendment stating that all this could have been "submitted at trial," could only imply that the plaintiff was guilty [of] mischievious [sic] abuse of the judicial process. Ms. Collier makes that implication in the Further Amendment, explicit at the post-trial hearing, by saying that DiCicco himself, is the source for the new evidence, in that he is the PRIMARY witness for the new evidence.

(¶ 28) Plaintiff's Amendment made it quite clear that defendant Earl A. Bonsey was a witness against the plaintiff. The fact that Bonsey was the plaintiff's only witness, and "friendly" witness at the trial, underlines the evidence as NEW EVIDENCE, and not as "additional" evidence. For Judge Smith to deny Bonsey, accused in the Amendment, as being a conspirator, in the falsification of the deed, the opportunity to take the witness stand, was a direct invasion of plaintiff's right, under the Sixth Amendment of the Constitution of the United States, to be confronted with witnesses against him. In appearing

to be following Ms. Collier's admonition, Judge Smith directly deprived the plaintiff of his right, under the Sixth Amendment, such deprivation being done under color of state law. Ms. Collier's admonition was that DiCicco was the PRIMARY source for the new evidence."

(¶ 29) " . . . Since Ms. Collier makes Bonsey's contribution as 'additional' evidence, it is tantamount to saying that DiCicco knew that Bonsey was lying all the time, and that DiCicco knew that he was going to lose land and money, but did not tell the judge at the trial, that Tremblay had falsified the deed. The plaintiff alleges that the very fact that Ms. Collier characterizes Bonsey's evidence as 'additional' evidence, is proven false, in ipse."

(¶ 31) "The fact that Ms. Collier found it necessary to distinguish the evidence of Bonsey and Knudson as 'additional' evidence, [in her Further Amendment] shows a nexus of participation with the judge, since the evidence of Bonsey and Knudson relate directly to the fundamental error in Judge Smith's decision." [There was absolutely nothing to be gained for her client, by changing new evidence to 'additional' evidence]

(¶¶ 44-49) "Issue: Was the plaintiff deprived of his right to be heard, and his right to adequate notice, protected by the Fourteenth Amendment of the Constitution of the United States."

(¶ 44) The notice to the hearing gave the plaintiff less than 2½ weeks to marshall 5 witnesses and documentation. There was no attempt by the court to ensure that the notice was received by Ms. Collier."

(¶ 45) The notice is cryptically entitled, 'THE SETTING,' [with no explanation as to the purpose of the post-trial hearing] so that Ms. Collier's secretary could be excused from not alerting [the 'vacationing'] Ms. Collier as to the urgency of the notice."

(¶ 46) "If any kind of sincerity had been attendant, [by Ms. Collier] a continuance would have been asked for."

(¶ 47) "When Ms. Collier went on the 3-week vacation, why was not notice given to the court, that she would not be available till Aug. 25, 1992." [Notice is dated Aug. 12, 1992]

(¶ 48) "Judge Smith did not allow the plaintiff to testify, giving as a reason, the libel and slander strategy of the Further Amendment. It is alleged, that this deprivation, was a direct attack on plaintiff's Fourteen Amendment right of due process of law) . . . done under color of state law."

(¶¶ 54-73) "Issue: Do the circumstances of the case, show that the judge had a bad faith intent, to personally harm and deprive the plaintiff of constitutional rights, under color of state law, at the post-trial hearing?"

(¶ 70) "Shortly after starting the trial, Judge Smith said he would call the plaintiff and Tremblay's attorney into chambers. Judge Smith did go into chambers, but he did not call the plaintiff, but apparently, he did meet with Tremblay's lawyer, because the latter was not in the courtroom. When Judge Smith came out of chambers, he framed the case just as Tremblay wanted it, 'I find that this is a land dispute.' There is no mention of plaintiff's affirmative defense of fraud."

(¶ 73) "Had the judge met with the plaintiff in chambers, before the trial, he would have learned that the plaintiff had wanted to settle the problem by giving the land that Tremblay wanted absolutely FREE, as the plaintiff was totally unprepared for the trial, due to not receiving any benefit of discovery procedures, and not being able to find suitable counsel that he could afford . . . The free offer was made through the attorney, Dan LaCasse. About two or three months before trial, (not sure of time) the plaintiff made another offer to Tremblay of giving him the land he wanted for $1000. Offer was made through the lawyer, Norman Toffolon. Why would Tremblay turn down these offers, unless he thought he could get a money award which would pay for his expenses."

(¶ 68) Judge Smith did not inform the plaintiff, [prior to the Tremblay v DiCicco bench trial] that he was replacing Judge Silsby, in the Tremblay v. DiCicco case."

(¶ 54) "At the trial, Tremblay contended that DiCicco's south border was not the existing 29 year old border that was concurrent with Richardson's north border, but was a border, further south . . . Tremblay's purpose was to put . . . the point that was created by [Tremblay's falsification of his deed] onto DiCicco's property, because a point cannot be a cause of a latent ambiguity, if the point is not even on the properties. Without passing on the question of law, Judge Smith declared that the existing 29 year old south border be ignored, and made . . . a new south border for DiCicco. [to accommodate Tremblay's fraud]

(¶ 55) "The Knudson letter, states that Tremblay had honored DiCicco's existing south border. [before DiCicco

bought his property from Knudson] Judge Smith ignored the Knudson letter because it was not notarized.

(¶ 56) The new evidence document, the Richardson deed, literally identifies the Lombardi-DiCicco south border to be concurrent with the Richardson north border. This fact confirms DiCicco's existing south border, and confirms the fact that the south border that exists, harmonized with the deed, of the plaintiff.

(¶ 64) " . . . the [Tremblay] northwest corner is 10 rods from the northeast corner . . . The Whalen deed [Tremblay's neighbor to the north] confirms this northwest corner for the Tremblay lot. Tremblay . . . chooses a northwest corner that is about 9 rods from the northeast corner, in order to adopt the "high water mark" frontage as the western boundary. [in order to distort the deeds and give more credence to his contrived 'latent ambiguity] Judge Smith allows this change in the northwest corner, and overlooks the fact that Tremblay did not hand in the Whalen deed."

(¶ 65) Judge Smith told the plaintiff that he was no longer to try to defend the deeds, as he had previously read the deeds, and they are [for the Judge] too ambiguous to be considered. The plaintiff had stated in his opening statement that his defense lies in the fact that his deed is valid and not ambiguous."

(¶ 6) " . . . A key 'trick' of the tort in COUNT III, was to represent to the court just the one parameter, the 'high water mark' as both the frontage and the western boundary, throwing the deeds in question into chaos . . . " [a particular "low water mark" is clearly the western boundary in the deeds in question]

(¶ 80) " . . . The plaintiff, in a motion to [state appellate Judge Roberts] . . . reported in detail, the obstruction of justice, [by Judge Smith and attorney Collier] and requested that the file be returned to Superior Court so as to retrieve the new evidence witnesses. The request was denied. Just before sending in the briefs for the appeal of Judge Smith's decision, [to Appellate Justice Roberts] the plaintiff discovered still another misrepresentation that was perpetrated upon the court and upon the plaintiff, and that was the misrepresentation of the western boundary of the property. The two parameter characteristic of the western boundary, was explained in detail, [to Judge Roberts] and it was also explained, how this characteristic was misrepresented to the trial court [by Tremblay and Bonsey] . . . The plaintiff wrote another motion to the LAW COURT, [Judge Roberts] again reporting the obstruction of justice at the post-trial hearing, and requested a hearing to explain the misrepresentation of the western boundary, and to explain all of the 'tricks' of the tort under COUNT III. Justice Roberts responded that plaintiff's motion would be considered in the appeal. The plaintiff claims that this was said under color of state laws, because the affirmance judgement of the LAW COURT proceeded without passing on the question of law of the obstruction of justice in suppressing the new evidence [by Judge Smith and Collier] that proved that the Judge Smith decision was in fundamental error."

(¶¶ 148-155) Did defendant Earl A. Bonsey deliberately, willfully, and knowingly, falsely represent the western boundary as the "high water mark," instead of a "low water mark," with the intent to deceive the court?"

(¶ 148) "Bonsey knew that there were two parameters on the bay, (The "high water mark" for the frontage distance, and a particular "low water mark" for the bound.) because he could not resist leaving a clue . . . [explanation of clue] . . . and this could not be known, unless one knew of the two parameters on the bay. Bonsey . . . played this trick . . . deceiving the court into thinking that there was just the western boundary of the "high water mark."

(¶ 153) " . . . on Sept. 15, 1988, he [Bonsey] drew a diagram for the plaintiff, misleading the plaintiff into thinking that the western boundary is the "high water mark."

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSEPH P. DICICCO	)	
Plaintiff	)	Civil No. 95-0153-B
v.	)	
EARL A. BONSEY, et al.,	)	
Defendants	)	

PLAINTIFF REQUESTS LEAVE TO
AMEND THE COMPLAINT

The Plaintiff asks leave of the court to amend the complaint in order to make the Complaint more explicit. The following addition, is to be placed under "Judgment by Perjury within Tort; Action on Case" in the caption, on page 31 of the Complaint:

> "Defendant Bonsey is charged with making false statements under oath; participation in the conspiracy to defraud the Plaintiff of property, money, and reputation; participation in the perjuries of defendants Tremblay and Leighton, by which Defendant Tremblay obtained the Judgment from the Tremblay v. DiCicco trial in 1992.
>
> Defendant Bonsey is NOT being charged with perjury, since he was called to be a witness at said trial. Perjury is the only offense he is absolved from within the above mentioned "Tort."

Dated this 6th day of December, 1995.

/s/ Joseph P. DiCicco
Joseph P. DiCicco, Pro Se
20 North Evarts Avenue
Elmsford, NY 10523
914-592-6975

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

December 24, 1996

Mr. Joseph P. DiCicco
20 North Evarts Avenue
Elmsford, NY 10523

Re: Joseph P. DiCicco
v. Earl A. Bonsey, et al.
Application No. A-450

Dear Mr. DiCicco:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on December 24, 1996, extended the time to and including March 7, 1997.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By /s/ Jeffrey D. Atkins
Jeffrey D. Atkins
Assistant Clerk

OPPOSITION

BRIEF

Supreme Court, U.S.
FILED
APR 10 1997
OFFICE OF THE CLERK

DOCKET NO: 96-1427

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

JOSEPH P. DICICCO,

PETITIONER,

v.

EARL BONSEY, ET AL.

RESPONDENTS

RESPONDENT ROBERT TREMBLAY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL J. DOSTIE, ESQUIRE
RELLA, DOSTIE & TUCKER, P.A.
ONE CUMBERLAND PLACE STE 308
BANGOR, MAINE 04402-0696
(207) 945-4720
COUNSEL OF RECORD
ATTORNEYS FOR RESPONDENT
ROBERT TREMBLAY

QUESTION PRESENTED

WHETHER THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE HAS DISCRETION TO DISMISS A CASE BASED UPON THE PLAINTIFF'S FAILURE TO OBJECT TO THE MOTION TO DISMISS AS REQUIRED UNDER LOCAL RULE 19(c).

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STATEMENT OF THE CASE

Respondent Robert Tremblay was the plaintiff in the underlying case in the Maine Superior Court in which he sought to establish the boundary line between his property and that of his neighbor, DiCicco. Sometime in 1986, Tremblay had a ravine filled. In this ravine, there was a property marker, an "honor point," which divided the properties of Tremblay and Dicicco. In September of 1988, DiCicco asked Earl Bonsey, predecessor in title to Tremblay, to redesignate the "honor point" which divided the properties. DiCicco became dissatisfied with the location of the point, alleging that the deeds had been changed by Tremblay.

In the fall of 1990, Tremblay filed a Complaint in the Maine Superior Court, Washington County, to establish the boundary line to the area of land in question, and to recover damages which resulted from DiCicco's destruction of some flowers and plants that were planted by Tremblay on that piece of land. DiCicco was represented by Earle Tyler, Esq. in some pretrial motions; however, Tyler resigned as counsel with the court's approval and DiCicco represented himself in the bench

trial of the matter before Justice Jack Smith. In May of 1992, the Superior Court found in Tremblay's favor, ordering that the boundary be set in accordance with Tremblay's request, and also ordering that damages be paid by DiCicco. Unsatisfied with the results he had obtained, DiCicco then hired Sandra Collier, Esq. to file post-trial motions for a new trial or to reopen the case to present more information. These motions were denied by Justice Smith.

DiCicco appealed this decision to the Supreme Judicial Court of Maine which affirmed the Superior Court judgment. Tremblay v. DiCicco, 628 A.2d 141 (Me. 1993). DiCicco then petitioned to the United States Supreme Court. The petition for a writ of *certiorari* was denied. ___ U.S.___, 114 S.Ct. 1062 (1994).

Still dissatisfied and having no other form of review available, DiCicco brought an action in the U.S. District Court, filing suit against multiple defendants who each played some role in the state court litigation. Obtaining no relief at the district court level or upon appeal to the First Circuit Court of Appeals,

DiCicco has now filed a Petition for a Writ of *Certiorari* with this Court.

SUMMARY OF ARGUMENT

With this Petition, DiCicco is in effect asking the Court to excuse his noncompliance with the Local Rules for the District of Maine. Tremblay filed a Motion to Dismiss, which was granted after DiCicco failed to timely object as required by Local Rule 19(c). However, DiCicco's *pro se* status does not absolve him from compliance with court rules. U.S. v. Heller, 957 F.2d 26 (1st Cir. 1992). It is well established that a district court may dismiss a case for a party's failure to comply with the court's local rules. DiCicco failed to file any opposition to Tremblay's Motion to Dismiss as required by Local Rule 19(c). Under the circumstances, it was within the district court's discretion to grant that motion.

ARGUMENT

A. IT WAS WITHIN THE DISTRICT COURT'S DISCRETION TO DISMISS DICICCO'S COMPLAINT DUE TO HIS FAILURE TO TIMELY RESPOND TO TREMBLAY'S MOTION TO DISMISS.

DiCicco filed his Complaint with the District Court in

July of 1995. On September 25, 1995, Tremblay moved to dismiss the Complaint as it related to him pursuant to F.R.Civ.P. 12(b)(6). DiCicco did not file an opposition to Tremblay's Motion; however, on October 23, 1995, DiCicco served a Notification of Violation of Rule 11(b) on then-counsel for Tremblay, Samuel Lanham, Esq. The Notification did not address the substance of the Motion to Dismiss, and in any event, was not a timely objection to the Motion to Dismiss because it was not filed within ten days of the filing of the Motion to Dismiss. Local Rule 19(c) provides that unless within ten days after the filing of a motion the opposing party files written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection. On November 6, 1995, Magistrate Judge Eugene Beaulieu issued a recommended decision, recommending that Tremblay's Motion to Dismiss be granted for the reason that DiCicco had waived objection to the Motion pursuant to Local Rule 19(c). DiCicco timely objected to this recommended decision and the matter was reviewed *de novo* by Chief Judge Gene Carter. Judge Carter

issued a decision on January 25, 1996 affirming the decision of Magistrate Beaulieu and granting Tremblay's Motion to Dismiss. The First Circuit affirmed the judgment of the District Court on August 27, 1996.

It is well-established that a litigant's *pro se* status does not absolve him from compliance with court rules. U.S. v. Heller, 957 F.2d 26 (1st Cir. 1992); FDIC v. Anchor Properties, 13 F.3d 27, 31 (1st Cir. 1994). "A *pro se* litigant must comply with a district court's procedural rules, as well as the Federal Rules of Civil Procedure." Anchor Properties, 13 F.3d at 31; Corey v. Mast Rd. Grain & Bldg. Materials Co., 738 F.2d 11, 12 (1st Cir. 1984)). A procedural default is not excused merely because the claimant is proceeding *pro se*. U.S. v. Three Parcels of Real Property, 43 F.3d 388 (8th Cir. 1994), rehearing and suggestion for rehearing denied.

The First Circuit has addressed this issue previously in numerous cases. For example, in Corey v. Mast Road Grain and Bldg. Materials Co, Inc., 738 F.2d 11 (1st Cir. 1984), the plaintiff failed to respond to the defendants' motion to dismiss

within ten days as required by Local Rule 12 of the District Court for the District of Massachusetts. The district court dismissed the suit and denied the plaintiff's subsequent motion for relief from the judgment under Fed.R.Civ.P. 60(b) on the ground of excusable neglect. The First Circuit Court of Appeals affirmed, holding that "the [district] court could properly decline to excuse plaintiff's noncompliance with the local rule . . . " and it was therefore not an abuse of discretion for the court to dismiss the complaint. Id. at 12. Similarly, in United States v. Proceeds of Sale of 3,888 Pounds Atlantic Sea Scallops, 857 F.2d 46 (1st Cir. 1988), the defendant/claimant failed to answer the complaint and file a claim within the time periods prescribed by the rules. The government moved to strike the defendant's late-filed answer and claim on the grounds that it was untimely. The defendant did not respond to that motion, and the court granted the motion as unopposed pursuant to Local Rule 12(a)(2). The court later entered a default judgment for the government. The defendant appealed, claiming that he missed the filing deadline due to reliance on erroneous advice from local

counsel. The First Circuit held that any such reliance was unreasonable and did not constitute excusable neglect. The court stated:

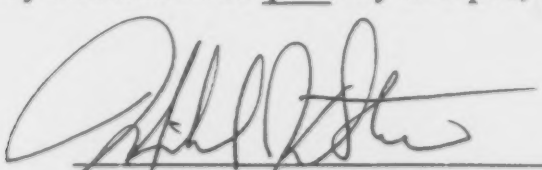
> We also agree with the district court that a default judgment may stand even where there has been no showing of substantial prejudice to the party benefiting from the default. **A district court simply may insist upon compliance with its local rules.**

Id. at 49 (emphasis added), citing Corey, 738 F.2d at 12. The instant case is indistinguishable from Corey and Proceeds of Sale of 3,888 Pounds Atlantic Sea Scallops. The district court was within its power to dismiss the Complaint for DiCicco's failure to comply with Local Rule 19(c) which requires the filing of opposition papers within ten days. Chief Judge Carter's order affirming the recommended decision of dismissal makes it clear that he reviewed the entire record in making his *de novo* determination to dismiss the Complaint. It was not an abuse of discretion for the district court to decide that DiCicco's failure to comply with the local rules warranted dismissal of the Complaint.

CONCLUSION

Although DiCicco's Petition for Writ of *Certiorari* purports to identify a constitutional issue to be reviewed, there is no constitutional or novel issue with regard to Petitioner's claims against Respondent Robert Tremblay. The sole issue is whether it was an abuse of discretion for the district court to dismiss the claims against Robert Tremblay based on DiCicco's failure to file timely opposition in accordance with Local Rule 19(c). That issue is not sufficiently significant to warrant this Court's involvement under Rule 10 of the Rules of the Supreme Court of the United States. Accordingly, Respondent Robert Tremblay respectfully requests that this Court deny DiCicco's Petition for a Writ of *Certiorari*.

Respectfully submitted this 10th day of April, 1997.



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